Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77 ORIGINAL

STATE OF TENNESSEE,
Plaintiff,

vs.

STATE OF ARKANSAS,
Defendant.

REPLY TO RESPONSE TO MOTION AND BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT

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TABLE OF CONTENTS

Page

Reply to Response to Motion and Brief in Opposition to Motion for Leave to File Complaint 1

Table of Authorities

Case

State of Nebraska v. State of Wyoming, 325 U.S. 589 (1945) 3

Statutes

Constitution of the United States
Article III, Section 2, Clause 1 2

28 U.S.C. § 1251(a)(1) (1948) 2

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The State of Tennessee, by and through its Attorney General, Brooks McLemore, for its reply to defendant's response in opposition to plaintiff's motion for leave to file complaint, states:

I

Contrary to defendant's assertion that a dispute as to the boundary line between the parties does not exist, plaintiff respectfully directs this Honorable Supreme Court's attention to

Exhibit "A" annexed to plaintiff's Motion for Leave to File Complaint which clearly shows the State of Arkansas claims jurisdiction and control over a portion of the lands involved in this controversy. Similarly, as referred to in paragraph XII of plaintiff's Complaint, Arkansas has claimed dominion over all the lands in dispute in *Smith v. Smith*, United States District Court, Eastern District of Arkansas, Jonesboro Division, No. J-702-38 (April 4, 1973).

Therefore, the allegation by Arkansas that the defendant has not had time to even hire an expert to determine the validity of plaintiff's claim is irrelevant and immaterial.

II

A real and justiciable controversy ripe for adjudication clearly exists. Plaintiff submits the protracted history of this dispute, defendant's continuous claim to the disputed area, the need to avoid the multiplicity of suits involving title to these lands, and the necessity of fixing a boundary line for purposes of taxation, all dictate this Honorable Supreme Court assume jurisdiction over this matter pursuant to Article III, Section 2, Clause 1 of the Constitution of the United States and the provisions of 28 U.S.C. § 1251(a)(1) (1948).

III

Plaintiff has not received any indication from defendant that an interstate agreement or compact resolving this boundary dispute is possible. In addition, the cases cited in defendant's brief in support of the proposition that negotiated settlements are preferred over litigation all involve water rights and proprietary interest in interstate waterways, rather than boundary disputes between states where same are formed, in whole or in part, by navigable waterways.

With reference to one of the cases cited by defendant, *State of Nebraska v. State of Wyoming*, 325 U.S. 589 (1945), even though this Honorable Supreme Court was reluctant to undertake the intricate and complex task of apportioning the waters of an interstate river, this Honorable Supreme Court noted a genuine controversy existed between the states and determined itself duty-bound to exercise the jurisdiction over same as entrusted in this Supreme Court by the Constitution. *Id.* at 616.

WHEREFORE, the State of Tennessee respectfully prays that this Honorable Court grant plaintiff's motion for leave to file complaint and take original jurisdiction of this controversy.

Respectfully submitted

BROOKS McLEMORE
Attorney General

ROBERT J. AMES
Assistant Attorney General

ROBERT B. LITTLETON
Assistant Attorney General

Proof of Service

The undersigned, Assistant Attorneys General for the State of Tennessee and members of the Bar of the Supreme Court of the United States, hereby certify that three copies of the foregoing Reply to Response to Motion and Brief in Opposition to Motion for Leave to File Complaint on behalf of the plaintiff herein have this day been forwarded by first class, postage paid mail, to the following: Honorable William J. Clinton, Attorney General of the State of Arkansas, Justice Building, Little Rock, Arkansas 72201; Honorable Frank B. Newell, Deputy Attorney General, Justice Building, Little Rock, Arkansas 72201; and Honorable Ellen B. Brantley, Assistant Attorney General, Justice Building, Little Rock, Arkansas 72201, counsel for the defendant, this . . . day of May, 1978.

ROBERT J. AMES
Assistant Attorney General
State of Tennessee

Assistant Attorney General
ROBERT B. LITTLETON